

COMMISSION OF THE EUROPEAN COMMUNITIES

— COM(82) 879 final

Brussels, 20 December 1982

Proposal for a
COUNCIL REGULATION (EEC)

imposing a definitive anti-dumping duty on certain chemical fertilizer
originating in the United States of America

(submitted to the Council by the Commission)

COM(82) 879 final

Copy 1/43

EXPLANATORY MEMORANDUM

On 22 July¹ and 21 August 1982² the Commission imposed provisional anti-dumping duties on exports of urea ammonium nitrate solution fertilizer originating in the USA. The duties were imposed on three companies, Allied Corporation, Transcontinental Fertilizer Company and Kaiser Aluminum Domestic and International Sales Corporation, all of whom had withdrawn from price undertakings accepted by the Commission in 1981³.

Allied Corporation did not co-operate in the Commission's subsequent investigation. In addition, Kaiser was found to have been in breach of its undertaking by exporting to the EEC via Transcontinental, whose undertaking price was lower than Kaiser's.

All three companies' undertakings had contained an indexation formula requiring six monthly adjustments of export prices. The Commission applied this indexation formula as the basis on which the levels of dumping were established. Exports by Allied Corporation, Kaiser and Transcontinental were on this basis dumped at margins of 19.05%, 12.13% and 12.01% respectively.

With respect to injury the dumped shipments amounted to approximately 12% of Community consumption in 1982 and were sold at prices considerably below the Community producers' costs.

On the basis of these facts the Commission therefore submits to the Council its proposal for a Council Regulation imposing definitive anti-dumping duties on certain chemical fertilizer exported by the US companies Allied Corporation, Kaiser Aluminum Domestic and International Sales Corporation and Transcontinental Fertilizer Company at the respective levels of 19.05%, 12.13% and 12.01%. It is also proposed to collect definitively all the amounts secured as provisional duty.

¹OJ N° L 214, 22.07.1982, p. 7

²OJ N° L 246, 21.08.1982, p. 5

³OJ N° L 39, 12.02.1981, p. 35

Proposal for a
COUNCIL REGULATION (EEC)

imposing a definitive anti-dumping duty on certain chemical fertilizer
originating in the United States of America

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) N° 3017/79 of 20 December 1979¹
on protection against dumped or subsidized imports from countries not
members of the European Economic Community, and in particular Article 12
thereof, as amended by Council Regulation (EEC) N° 1580/82 of
14 June 1982²,

Having regard to the proposal submitted by the Commission after consultation
within the Advisory Committee provided for by the said Regulation
(EEC) N° 3017/79,

in 1981
Whereas the Council, by Regulation (EEC) N° 349/81³, imposed a definitive
anti-dumping duty on imports of urea ammonium nitrate solution fertilizer
(UAN) originating in the United States of America (USA) the level of duty
being 6.5%;

Whereas this definitive anti-dumping duty did not apply to UAN exported
by inter alia Allied Corporation (formerly Allied Chemical Corporation),
Aluminum Domestic and International Sales Corporation (Kaiser) and Transcontinental
Fertiliser Co. (Transcontinental) since price undertakings were offered by these
companies and were considered acceptable by the Commission⁴;

¹ OJ N° L 339, 31.12.1979, p. 1

² OJ N° L 178, 22.06.1982, p. 9

³ OJ N° L 39, 12.02.1981, p. 4

⁴ OJ N° L 39, 12.02.1981, p. 35

Whereas Allied Corporation, Transcontinental and
Kaiser have by
correspondence dated 7 June, 2 July and 23 July 1982 respectively informed
the Commission of their withdrawal from their individual price undertakings;

Whereas in accordance with Article 10(6) of the said Council Regulation
(EEC) N° 3017/79, the Commission informed the Member States forthwith
and reopened the proceedings¹; whereas this reopening was also warranted
by evidence submitted to the Commission by the EEC producers of changed
circumstances as regards imports of UAN² to the Community from the USA to
justify a need for a review in terms of Article 14 of the said Council
Regulation (EEC) N° 3017/79;

Whereas the Commission considered that the companies which
withdrew from their undertakings did so in order to export UAN to the
Community at price levels below those specified in the undertakings; whereas
according to the information available to the Commission
any exports
at such price levels would be dumped and cause injury to the Community
industry;

Whereas the dumping margins determined
during the previous investigation were 6.5% for Allied Corporation and
Transcontinental and 5% for Kaiser;
whereas these levels were those at which
duties would have been imposed had these companies' price undertakings not
been accepted;

Whereas the Community's interests therefore called for the immediate
application of provisional measures based on the evidence available to the
Commission; whereas the Commission has, accordingly, in terms of Article 10(6)
of the same Council Regulation (EEC) N° 3017/79 imposed provisional anti-
dumping duties at the above-mentioned levels on the three companies concerned
by Regulation (EEC) N° 1976/82³, as amended⁴;

¹ OJ N° C 179, 16.07.1982, p. 4

² Common Customs Tariff subheading: ex 31.02 C; Nimexe code: ex 31.02-90

³ OJ N° L 214, 22.07.1982, p. 7

⁴ OJ N° L 246, 21.08.1982, p. 5

Whereas the Commission at the same time commenced further investigation and officially so advised the exporters and importers known to be concerned as well as representatives of the exporting country;

Whereas the Commission has given the parties directly concerned the opportunity to make known their views in writing and to request a hearing; whereas all the exporters concerned and certain importers have made their views known in writing and have requested and been granted a hearing;

Whereas in order that a full examination of the available facts / ^{could be} made by the Commission before definitive measures were taken, the Council by Regulation (EEC) N° 3044/82¹ prolonged the validity of the provisional anti-dumping duties by two months;

Whereas the Commission has for the purpose of the further investigation sought and verified information deemed to be necessary at the premises of the following EEC producers:-

Azotes et Produits Chimiques SA, Paris

Compagnie Française de l'Azote, Paris

Général des Engrais, Paris

Société Chimique de La Grande Paroisse, Paris

Ruhr Stickstoff AG, Bochum

BASF AG, Ludwigshafen

Nederlandsche Stickstof Maatschappij, Brussels

Unie van Kunstmestfabrieken BV, Utrecht;

and the following importers:- Demufert SA, Brussels; Ferdis SA, Brussels;

Whereas Allied Corporation did not co-operate in the investigation; whereas

Kaiser informed the Commission that they had not exported to the EEC since

offering their undertaking and accordingly no relevant export price existed for

comparison purposes; whereas, however, an investigation took place at the premises of

Transcontinental in Philadelphia which revealed that the product exported

by it had been produced by Kaiser;

Whereas the Commission, as a result of this further investigation, has established updated normal values for the companies concerned; whereas, because of the lack of co-operation from Allied Corporation the Commission had to establish whether there was dumping in the case of Allied in conformity with Article 7 paragraph 7(b) of Regulation (EEC) N° 3017/79 on the basis of the facts available; whereas, of the facts available, published data on US domestic prices had to be rejected by the Commission, since the exporters and importers concerned disputed their accuracy and since the Commission had reason to believe that even if these prices accurately reflected conditions on the US market they were not sufficient to cover the producer's fixed and variable costs; whereas consequently the Commission took account of the fact that in 1981 Allied Corporation had subscribed to a price undertaking in order to keep its export prices in line with normal value and that in order to avoid future discrepancy between normal value and export prices the undertaking included an indexation formula requiring the six monthly adjustment of export prices;

Whereas since Allied Corporation had made two large shipments to the Community since withdrawing from their price undertaking the reference period for the purposes of establishing dumping was taken from the date of the first shipment (July 1982) to the end of 1982; whereas the Commission has applied ^{indexation} the/ formula for the reference period and since the resulting price is that at which Allied would have had to export in accordance with the terms of the price undertaking, ^{has} used this price to establish the normal value for the reference period;

Whereas Kaiser and Transcontinental were required to apply the same indexation formula as Allied Corporation to adjust their export prices six monthly;

Whereas although Kaiser made no direct shipments during the period of validity of its price undertaking, the investigation revealed that the single shipment made by Transcontinental during this period was of product manufactured by Kaiser; whereas, consequently, a normal value was established for Kaiser by applying the formula for adjusting Kaiser's export price for the six month period during which the single shipment took place, i.e. the first six months of 1982;

Whereas since Transcontinental made no sales of the product on the US domestic market and since the only shipment made by this company to the EEC during the relevant period was of product manufactured by Kaiser, the Commission considered it appropriate to take the normal value established for Kaiser as the basis for Transcontinental's normal value; whereas adjustment of Kaiser's normal value was made to take account of a reasonable profit margin for Transcontinental; whereas for this purpose 5% before taxation was considered reasonable;

Whereas for Allied and Transcontinental export prices were determined on the basis of the prices actually paid for the products exported to the Community;

Whereas, since Kaiser made no direct shipments to the Community during the relevant period but exported via Transcontinental and since during the investigation Transcontinental would not reveal the price it paid to Kaiser for the product, the Commission determined Kaiser's export price by reducing that of Transcontinental by the amount of a reasonable profit margin

for the resale of such product to the Community, namely 5%; whereas, in addition, Kaiser's undertaking price was significantly higher than that of Transcontinental; whereas Kaiser was required by the terms of its undertaking to take all possible steps to ensure that the undertaking was not evaded by resales made for export to the Community of products sold in countries not members of the Community; whereas the Commission therefore has reason to believe that Kaiser's undertaking has been violated;

Whereas all comparisons of normal values with export prices were made at an FOB US port level;

Whereas such comparisons show the existence of dumping in respect of the three companies concerned, the margins of dumping being equal to the amounts by which the normal values as established exceed the prices for export to the Community;

Whereas since Allied Corporation made shipments at different price levels a weighted average dumping margin for this company was determined;

Whereas the margins varied according to each exporter and were as follows:

Allied Corporation 19.05%

Kaiser Aluminum Domestic^{and} International Sales Corporation 12.13%

Transcontinental Fertilizer Company 12.01%;

Whereas the Commission considered that the results of its investigation provided as accurate a basis for determination of the level of dumping as possible and that lower levels would constitute a bonus for Allied Corporation's withdrawal from its undertaking and subsequent non-cooperation and the withdrawal from their undertakings by Kaiser and Transcontinental;

Whereas with regard to the injury caused by the dumped imports the evidence available to the Commission shows that for the companies concerned the quantity of these imports for the first eight months of 1982 amounted to 118 850 tonnes which, if taken on an annual basis, would account for some 12% of total Community consumption of UAN;

Whereas the prices paid in the Community for the dumped products in question significantly undercut the prices of the Community producers;

Whereas the impact on this Community industry has been that losses continue to be made on UAN sales;

Whereas in considering whether injury has been caused by other factors the evidence available to the Commission shows that certain other Community producers situated in other Member States have entered the market and increased their sales^{of UAN} particularly in France; whereas, however, the investigation has shown that the low level of these producers' prices resulting in considerable losses was due to the fact that they had to compete with the dumped imports; whereas, accordingly, injury caused by the dumped imports has been sustained by producers throughout the Community and the allegation of the exporters and importers concerned that any injury to French and German producers was solely as a result of increased sales of UAN from other Community producers cannot be supported;

Whereas, furthermore, the Commission is currently undertaking an anti-dumping review procedure concerning the remaining exports of UAN to the Community;

Whereas the impact of the dumped imports of the companies concerned has therefore been isolated from that of the other exports subject to the above review investigation;

Whereas the exporters and importers concerned further alleged that the French producers, comprising 43% of Community production of UAN could not be considered to have sustained injury in view of the Decision of the Minister for Competition¹ an alteration of requiring/certain aspects of the French producers

¹ Bulletin Officiel de la Concurrence et de la Consommation of 12.12.1981

pricing policy regarding, inter alia, nitrogen based fertilizers;

whereas they further alleged that although this decision refers to both solid (mainly ammonium nitrate) and liquid (UAN) nitrogen based fertilizers this does not reduce its relevance since ammonium nitrate and UAN are effectively like products; ^{however} whereas, in its investigation, the Commission sought and verified data relating to production and sales of UAN, this data clearly permitting separate identification of the product concerned; whereas the Commission is satisfied that in the course of this investigation it received correct information on the particular situation relating to Community producers of UAN; whereas the Commission, in the light of this information is satisfied that the dumped imports of UAN from the companies concerned have caused material injury to the Community producers, including those in France; whereas the Commission sees no contradiction between this specific injury finding regarding UAN and the Decision of the French authorities which referred to the behaviour of fertilizer producers in relation to a much wider range of both phosphorous and nitrogen based fertilizers;

Whereas no representations have been received by the Commission from consumers in the Community; whereas in any case the interest of consumers in the Community is not served in the long run by a Community industry weakened or reduced by persistent dumping; whereas in these circumstances protection of the Community's interests calls for the imposition of definitive anti-dumping duties on urea ammonium nitrate solution fertilizer originating in the United States of America and exported by the three companies concerned, which, having regard to the extent of injury caused, should be equal to the dumping margins found, and for the definitive collection of all amounts secured by way of provisional duty in respect of the product concerned;

Whereas the exporters and importers concerned were informed of the Commission's findings in accordance with Article 7 of the said Council Regulation (EEC) N° 3017/79;

Whereas, however, these definitive measures regarding the imports by those exporters which have withdrawn from their undertakings shall not in any way prejudice the results of the review procedure regarding other exports of UAN from the USA currently being undertaken by the Commission;

Whereas, until the current or any subsequent review procedure requires the repeal, annulment or amendment of Regulation (EEC) N° 349/81 it shall remain in force, .

HAS ADOPTED THE FOLLOWING REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on urea ammonium nitrate solution fertilizer, falling within Common Customs Tariff subheading ex 31.02-C and corresponding to NIMEXE code ex 31.02-90 exported by Allied Corporation, Kaiser Aluminum Domestic and International Sales Corporation and Transcontinental Fertilizer Company.

2. The rates of duty shall be based on the customs value determined in accordance with Council Regulation (EEC) N° 1224/80 of 28 May 1980 on the valuation of goods for customs purposes¹ and are as follows:

Allied Corporation 19.05%

Kaiser Aluminum Domestic and International Sales Corporation 12.13%

Transcontinental Fertilizer Company 12.01%

3. The provisions in force for the application of customs duties shall apply to the duty.

Article 2

The amounts secured by way of provisional duty pursuant to Regulation (EEC) N° 1976/82 shall be definitively collected at a rate of

6.5% for exports by Allied Corporation

6.5% for exports by Transcontinental Fertilizer Company

5.0% for exports by Kaiser Aluminum Domestic and International Sales Corporation.

Article 3

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels

For the Council

¹ OJ N° L 134, 31.05.1980